

EXHIBIT E

BALLONSTOLLBADER & NADLER, P.C.
COUNSELLORS AT LAW FOUNDED 1931

729 Seventh Avenue
New York, NY 10019-6831
Tel: 212-575-7900 Fax: 212-764-5060
www.ballonstoll.com
Affiliate offices:
Hackensack, New Jersey
Philadelphia, Pennsylvania

August 14, 2008

Honorable Douglas F. Eaton
United States Magistrate Judge
United States District Court
United States Courthouse – Room 1360
500 Pearl Street
New York, New York 10007-1312

Re: Cyber Champion v. Falchi
07 Civ. 9503 (LAK)(DFE)
C/M No. 16678.004

Honorable Sir:

I want to thank you for agreeing to see the parties on August 5, 2008. We have your scheduling order which reflected the discussions we had that day.

After our meeting with Your Honor, I had an opportunity to confer with Marcos Falchi as well as Mr. Kachajian. To put it mildly, they were both stunned that there was even a hint that the discussion which we had in Court on June 3, 2008 and reflected in the transcript could possibly be binding. Leaving aside the legal arguments pro and con for that proposition, they both confirmed to me that they were under the impression that whatever was said in the mediation session could not be presented to the Judge in any way, shape or form or used against them in Court or at trial, as they believed it to be confidential settlement discussions.

It should be noted that we are still conferring with Mr. Lazarus and trying to finalize an approach concerning resolution. In the meantime, however, I would note that there was no particular reservation on the transcript to be bound in absence of a formal writing, neither was there any statement from any party, Your Honor included, which evidenced any intent or understanding that the terms were binding. There has been no partial performance of any settlement agreement. Further, the substantial nature of the obligations to all parties – an exchange of \$2.5 million – is the sort that is typically reduced to writing and formally executed by counsel and the parties.

Honorable Douglas F. Eaton
United States Magistrate Judge
United States District Court
August 14, 2008
Page 2

Finally, Your Honor stated that the case may be restored to the calendar if the settlement is not effectuated, which would indicate that no one in the room that day considered the terms to be binding at that time.

While I am sure that if we cannot resolve this Mr. Lazarus will make the motion that you suggested, and which is contemplated by your scheduling order, my client just wanted this point made for the record.

Respectfully,

A handwritten signature in cursive script that reads "Dwight Yellen".

Dwight Yellen
(Dictated but not read)

/zf

cc: Falchi Distribution
Brian Gaynor, Esq.
Harlan Lazarus, Esq. ✓